IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 317 OF 2001

Bhagwan Dhongo Kharate ....Appellant.

V/s

The State of Maharashtra ....Respondent.

Shri Arfan Sait, advocate for the appellant.
Shri A.S. Shitole, APP for the State.

CORAM: D.G. DESHPANDE &
V.M. KANADE, JJ.

DATE : 14th December, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. The appellant is challenging the judgment and order passed by the Court of Sessions for Greater Bombay in Sessions Case No. 242/97 whereby the Sessions Court was pleased to convict the appellant for the offence punishable under section 302 and 498A of the Indian Penal Code. He was sentenced to suffer R.I. for life and to pay fine of Rs 5000/- and, in default, to suffer further R.I. for one year for the offence punishable under section 302 and he was sentenced to suffer R.I. for three years and to pay fine of Rs 3000/- and, in default, to suffer R.I. for six months for the offence punishable under section 498A of the Indian Penal Code.

2. The prosecution case is that the appellant was an alcoholic and he used to assault his wife under the influence of liquor. Three children were born out of the said marriage. However, on account of extreme cruel treatment which was given by the appellant, the deceased went back to her parents and resided there for about two years. However, the accused, thereafter, persuaded the deceased to come back to his house and, therefore, she started residing with the accused. Thereafter, the accused shifted to Dharavi, Mumbai. The accused never permitted his wife Mangala to go to her mother's place and he used to assault her very often. P.W. 5 - the mother of the deceased had stayed with the deceased at Dharavi, Mumbai for about eight days and she had witnessed the accused assaulting the deceased very often. The accused, thereafter, drove the mother of the deceased out of his house and she went back to stay at her native place. P.W.2 - Ganesh Subhash Lokhande who was the neighbour of the accused also had seen the appellant assaulting Mangala very often.

3. The prosecution case is that on 24/5/1996, the accused returned from his work and he consumed liquor and was under the influence of liquor. Soon thereafter, he started abusing the deceased and

suspected her fidelity. The prosecution case is that the deceased served dinner to him and, thereafter, at about 11.30 a.m. sat down to take her food. However, the accused did not allow her to take her food and, thereafter, brought a Kerosene Can of one litre and poured it over a body of Mangala and set her on fire. P.W. 2 who was the neighbour of the appellant came there and extinguished the fire and took her to Sion Hospital for treatment. The information was sent to Dharavi Police Station. The Special Executive Magistrate was called and the statement of Mangala was recorded initially by P.W.1 Ashok Kashinath Vairale and then by the Special Executive Magistrate. In both these statements, Mangala has stated that the accused had poured kerosene on her body and set her ablaze.

4. The trial court, on the basis of the evidence adduced by the prosecution convicted the accused. The prosecution examined in all 9 witnesses. The prosecution has relied on the two dying declarations as well as statement of P.W. 2 - Ganesh Lokhande, P.W. 5 - Nimbabai, the mother of the deceased, the evidence of P.W. 3 Dr. Ramesh Tapase who had conducted the post-mortem and the evidence of P.W. 4 - Dr. Anup Ramani who had made an endorsement on the statement which was given by the deceased Mangala on

25/5/1996 at 12.15 a.m. P.W. 6 - Shantkumar Basanlingappa who was the neighbour of the accused had seen the spot after the P.W.3 had extinguished the fire. P.W. 7 - Gupta was also the neighbour of the appellant. He has stated the past conduct of the appellant. P.W. 8 - API Ishwar Vasove recorded the complaint and P.W. 9 - P.I. Suresh Sakhare carried out the investigation.

5. A perusal of the evidence clearly indicates that the appellant was an alcoholic and used to illtreat his wife and assault her. This fact has been established by P.W. 5 - mother of the deceased. P.W. 4 - Dr. Anup Ramani in his evidence has stated that Mangala was admitted in the hospital and he immediately started giving her medical treatment. He has stated that the Police Officer who had accompanied the victim asked him whether the patient was in a condition to give her statement and he examined the patient and stated that she was in a fit condition to give her statement. Accordingly, her statement was recorded and an endorsement of P.W. 4 was taken on 25/5/1996 at 12.20 a.m. He has stated that the patient was able to speak. He has also stated that the patient had given history of the alleged burns. The second dying declaration was recorded by P.W. 1 -

Ashok Vairale who was the Special Executive Magistrate. He has stated that on the date of the incident, Police Constable came to his house and told him that a dying declaration was to be recorded. He, accordingly, went to the hospital and met the doctor. P.W. 1 asked the doctor whether the statement of the patient could be recorded and the doctor told him that she was in a fit condition to give her statement. P.W.1 has stated the questions which he had asked her and the replies which were given by her. P.W. 1 has stated that Mangala had stated that her husband had poured kerosene on her body and had set her on fire and then left the house. Thus, there is no discrepancy in the two dying declarations. A proper endorsement is made by the doctor on the first statement recorded by API Vasove and the second dying declaration recorded by the Special Executive Magistrate. The fact that after setting her on fire, the husband had gone out of the house has been established by the prosecution. The accused, appellant herein, was apprehended almost after a lapse of one and half month after the date of the incident since he was absconding. This circumstance establishes that whatever Mangala had stated in her dying declaration was true and correct. The fact that Mangala was burnt has been established by P.W. 2 -

Ganesh Lokhande who extinguished the fire and took her to the hospital.

6. It is a well settled position in law that if there is no discrepancy in the dying declarations which are recorded, the Court can convict the accused only on the basis of the dying declarations. In the present case, apart from two dying declarations, there is another evidence in the form of statement of P.W. 2 to indicate that the appellant had committed the said offence. The past conduct of the appellant also has been stated by P.W. 5 - mother of the deceased. Thus, in my view, the prosecution has established beyond the reasonable doubt that the appellant has committed murder of his wife by pouring kerosene on her and setting her on fire. The judgment and order of the Sessions Court, therefore, is confirmed. The appeal is accordingly dismissed.

(D.G. DESHPANDE, J.)

(V.M. KANADE, J.)